

making by labour or machine of an object or various objects into another object of a different character. Thus if a slab of granite is carved into a grindstone, a piece of wood is made into a piece of furniture, or a lump of earth into a brick, it is manufacture. Similarly, if transistors, condensers, resistors and pieces of wire are put together in a box so as to convert them into a radio or a television set, or if pieces of shaped iron sheets, rubber, glass, fabrics and other materials are assembled and turned into a vehicle it is "manufacture". I do not think it matters whether the parts are derived from their natural state, e.g. earth or stone, or man-made e.g. condenser, resistor, glass or shaped iron sheets, or whether the parts are old or new, imported or locally produced. The essence of manufacture is the transformation of these parts or basic components into another article of a different character. The origin, nature, condition or age of the parts or basic components, or the condition of the product of the manufacture is not a factor to be taken into consideration in determining the act of manufacture. All this, particularly age, will only affect the value of the products for the purpose of excise duty.

Section 16(1) of the Act so far as applicable to the present case reads: "Subject to the provision of this section, no person shall . . . manufacture any dutiable goods, . . . except under and in accordance with the provisions of a licence . . ." From this wording I am of the view that any conversion or transformation of any article or material into goods which by their nature is dutiable under the Act is manufacturing for the purpose of the Act. I therefore agree with the submission on behalf of the appellant that if the goods which are manufactured attract excise duty then there must be a licence for their manufacture. I do not think it is necessary to show that the manufacture should be on a large scale. The test is whether excise duty is leviable on the goods produced.

In the present case the parts of a car were imported. These parts became a car when they were put together here, and more so, when wheels and tyres were added to it. No doubt the transformation reverts the parts into what the learned president found to be a car which had existed in Singapore. But when the car was dismantled in Singapore into parts it ceased to exist. They were imported here, not as the car which had existed in Singapore, but as component parts. Each part was a separate entity and could not have functioned by itself as a car. The process of putting them together here so as to turn them into a car I hold is the act of manufacturing. Since excise duty is leviable on a car, a licence is required for its manufacture. The fact the car that was made is considered old in the generally accepted sense of the word will only affect the value of the car for the purpose of excise duty. Old or vintage cars have been known to fetch higher prices than they are really worth.

The next question to be determined is whether the prosecution has made out a case against the respondent as charged. No doubt the respondent did not do the assembling himself. But the evidence shows that he imported the engine after the body and chassis had been imported. In argument a lot of stress has been placed on the fact that he merely instructed that these

parts be assembled. But the evidence shows he not only gave the instruction but he also brought the parts to the service station. The mechanics could not have carried out his instruction if he had not supplied them with the materials, and if he had not added wheels and tyres there would have been no running vehicle.

I therefore find that on the evidence established by the prosecution the acts of the respondent came within the offence as charged, i.e. he was concerned in the manufacture. I set aside the order of acquittal, remit this case back to the Sessions Court, and direct that the defence be called.

Order accordingly.

Solicitors: *Keith Sellar & Tennakoon.*

LOW WAN KWONG v. LAU KIING TIING

[O.C.J. (Tan Chiaw Thong J.) June 22, 1974]

[Sibu — Matrimonial Cause No. 4 of 1971]

Family Law — Divorce — Foochow custom — Allegation that respondent had left matrimonial home without petitioner's consent or knowledge with intention of never again cohabiting with the petitioner — Desertion — Incompatibility and impossibility despite genuine efforts to live reasonably as husband and wife — Period of two years required — Maintenance of wife and child.

In this case the petitioner applied for an order of dissolution of marriage on the grounds (a) that the respondent had left the matrimonial home without the petitioner's consent or knowledge and with the intention of never again cohabiting with the petitioner; and (b) that the petitioner and the respondent were completely out of sympathy with each other, were incompatible and found it impossible despite genuine efforts to live reasonably together as man and wife.

Held: (1) on the evidence the petitioner had failed to prove that the respondent had deserted him but even if the respondent had been guilty of desertion, the petition was presented prematurely as it was presented less than half a year after the alleged desertion. Where desertion is alleged against a respondent, it has to be for a period of at least two years before a petition can be presented;

(2) on the evidence the petitioner has not proved the second ground alleged against the respondent and in any event the time for which this ground should subsist is two years;

(3) as the respondent in this case was living apart from the petitioner and not without sufficient reason, she was entitled to maintenance for herself and her child.

Cases referred to:-

- (1) *Tang Sui Ing v. Goh Tiew Liong* [1964] M.L.J. 406.
- (2) *Kong Nen Siew v. Lim Siew Hong* [1971] 1 M.L.J. 262.
- (3) *Sia Wang Yung (f) v. Hii Ik Chieng*, Sibu Matrimonial Cause No. 1 of 1967, unreported.

DIVORCE.

Joseph Tang for the petitioner.

Cheng Kwang Li for the respondent.

Tan Chiaw Thong J.: The petitioner is asking for an order of dissolution of marriage against the respondent on two grounds. Firstly, that the respondent had left the matrimonial home at Sg. Narasit, Binatang without the petitioner's consent or knowledge and with

the intention of never again cohabiting with the petitioner and secondly, on the amended ground that the petitioner and the respondent are completely out of sympathy with each other, are incompatible and find it impossible despite genuine efforts, to live reasonably together as man and wife. As to the second ground, it seems clear that it is based on the case of *Tang Sui Ing v. Goh Tiew Liang*.⁽¹⁾ The respondent is contesting the petition.

In support of the first ground, the petitioner gave evidence that the respondent on 5 October 1970 left the matrimonial home at Sg. Narasit, Binatang to stay with her mother. Subsequently, he went to the house of his parents-in-law and attempted to persuade the respondent to go back but she refused, whereupon he went to see the Chinese Area Headman for Sg. Narasit, Sia Kee Tung (PW2) who could not settle the matter and referred it to the Chinese Headman for Binatang Bazaar area, Teng Tung Hin who was unable to settle the matter between the petitioner and the respondent either. As to the second ground, the petitioner said that the respondent left him because both of them were incompatible and the only ground he gave in support of his allegation was that the respondent was not kind to him and was arguing with him every day. He further stated in cross-examination that there were quarrels between them over the matter about the respondent going back to visit her mother. He alleged that every time after a quarrel, the respondent returned to her parents. He also alleged that there were several quarrels about gold ornaments, which the respondent brought with her when she married the petitioner and which the petitioner considered to belong to him. The petitioner added that he did not now have any love and affection for the respondent. He denied having been told about the birth of the child of the marriage since the presentation of his petition and it is clear from his evidence that he also did not want the child. In cross-examination, he stated that before the respondent left him, he did not love her because she treated him very badly and intended to get rid of her.

Sia Kee Tung (PW2), the Chinese Headman for Sg. Narasit, Binatang, stated that he was consulted by the petitioner after the respondent had left him. He advised the petitioner to call back the respondent. The petitioner came to see him a second time. Subsequently and together with the Chinese Headman for Binatang Bazaar area, Teng Tung Hin, a notice was issued calling up the respondent. He also deposed that when both parties appeared before him, he offered to find a house in his area for both parties to reside. The petitioner later agreed to his suggestion that the parties reside in the house subsequently found by him in his area. Before he found the house, he received a letter which he took to have been written by the respondent, (Ex. P2). The contents of this letter were to the effect that the respondent refused to return to the original matrimonial home and she insisted that the petitioner should make a living with her elsewhere. I shall come back to this letter later.

PW2 was called by the petitioner as an expert on Foochow custom relating to divorce. However, he admitted that his knowledge on divorce according to Foochow custom was limited; that the case between the petitioner and the respondent was the first one of

its kind that he has handled and that his knowledge about Foochow custom relating to divorce was gained as a result of discussions with other area headmen in the Binatang district during annual meetings of such headmen. According to him, divorce may be granted according to Foochow custom on the following grounds:—

A (1) If a wife leaves a husband who asks her to return but she refuses; or a relative of the husband does so and she refuses; or the area headman concerned advises her to go back and she refuses.

B (2) If both spouses have been living apart for one year.

On his own evidence and particularly having regard to the source of his knowledge about Foochow customary law relating to divorce and his limited experience in relation to such matters, I am not prepared to accept PW2 as an expert witness on Foochow customary law relating to divorce. Further, the grounds given by him are at variance with those given by Datuk Ting Lik Hung (DW2).

C The mother of the petitioner, Ting Ching Mui (PW3) gave evidence of how on 5 October 1970 she discovered that the respondent had left the matrimonial home when the latter could not be found that morning. She informed the petitioner who was then working at a padi field some distance away from the house. She said that the respondent could get on with her and there was no trouble between the respondent and other members of the family. She could not think of any reason why the respondent should leave the matrimonial home. She went to the extent of saying that she loved the respondent and both of them treated each other well. She did not know that the respondent had asked the petitioner to set up home elsewhere although she knew that the petitioner and the respondent had been called by the Chinese Headman for Binatang, Teng Tung Hin. She did not oppose the petitioner living outside and did not want to interfere in the matrimonial affairs between the petitioner and the respondent. However, she added that she did not care whether the marriage between the parties succeeded or not. She did not know the relationship between the parties and also why the petitioner wanted to divorce the respondent.

D The respondent in her evidence stated that there were quarrels between her and her mother-in-law, PW3. She stated that the first quarrel took place about some 20 days after the marriage and was over the matter about her wanting to go back to see her mother about which PW3 was unhappy. She alleged that she was not given any monthly allowance and that whenever she wanted some money, she had to take it from PW3 who would pass it to the petitioner to be handed to her. If the petitioner was not at home then she would get no money from PW3. She helped in tapping rubber. She gave an instance in 1970 when she wanted to go to the clinic with her husband but was not allowed to do so by PW3. She said that on 4 October 1970, she had no food because PW3 stated that since she did no work, she need not cook or eat. On the same day, she woke up at 5 a.m. and went to tap rubber. On her return, she was scolded by PW3 who told her that she need not take food because she had not finished tapping all the rubber. She took no food that day.

On 5 October 1970, she tried to open the door of her bedroom but it was bolted from outside. She then left the house through a window and went to her mother's house. She admitted that the petitioner went to see her in her mother's house subsequently and she told him that she would follow him wherever he went except that she would not go back to her mother-in-law's house. She alleged that the petitioner did not reply and returned after a while. She denied having written Ex. P2. She stated that before she left the house, she told the petitioner that she was pregnant. The child of the marriage, a son, was born on 12 May 1971 in the Lau Fong Fei Maternity and Child Health Clinic at Kampong Nyabor, Sibui. Although she sent word about the birth of the child, the petitioner did not pay her any visit and she had to spend a sum of \$272 in connection with charges for her stay in the Clinic and the delivery of the child as evidenced by Ex. D2.

The petitioner and PW3 were not impressive witnesses. Apart from the petitioner's own evidence about the quarrelsome attitude of the respondent towards him, there was no other evidence. He admitted that he knew of quarrels between the respondent and PW3 and that the respondent could not get on well with PW3. He did not deny the allegation of the respondent that she had asked him to set up home outside but he had explained that he could not do so because of his financial position, stating that to set up a separate home outside, he would have nothing to do for a living because he was not educated and that his work only consisted of planting padi on a small acreage. However, the evidence of PW2 does not appear to support him on this point because, according to PW2, when he suggested that the parties set up home outside and when he offered to find a house for them in his area, the petitioner subsequently told him that he accepted his suggestion and agreed to stay in a house which he had found for the parties. This would indicate that the petitioner is able to be self-supporting, living apart from his parents. I find on the evidence that it was not beyond the capability of the petitioner to set up a home outside with the respondent had he so wished.

PW3 had alleged that the relationship between her and the respondent was good but on the evidence of the petitioner himself, there had been quarrels between them. This corroborates the evidence of the respondent. I do not think that the respondent would have asked the petitioner to set up home with her outside without any reason and I find that on the evidence she had succeeded in proving that the reason why she asked him to do so was because of the unsatisfactory relationship between PW3 and herself. I am inclined to believe the respondent, and not PW3, when she stated that she had not been well treated by PW3. I am also inclined to believe the respondent as to the circumstances under which she left the matrimonial home. I find that it was because of ill treatment by PW3 over a period that she left the matrimonial home on 5 October 1970. In such circumstances, I find on the evidence that the petitioner has failed to prove his first ground. I further find on the evidence that the respondent had not left the matrimonial home without reasonable cause; that when she left it, it was not with the intention of deserting the petitioner, but with the view of persuading the petitioner to set up home with

A her outside the home of her parents-in-law. The two Chinese Headmen, PW2 and Teng Tung Hin had also advised the setting up of such a home and I have found that the petitioner had agreed to set it up at the suggestion of PW2. I would add that even if the respondent had been guilty of desertion, which I do not hold to be so, the petitioner had presented his petition prematurely because it seems clear on the authority of *Tang Sui Ing's* case that where desertion is alleged against a respondent, it has to be for a period of at least two years before a petition may be presented. In this case the alleged desertion took place on 5 October 1970 and the petition was presented on 22 January 1971 which is less than half a year after the alleged desertion. The first ground of the petitioner therefore fails.

C As to the second ground, I have stated that the only evidence in support of this ground is the evidence of the petitioner himself. He has not cross-examined the respondent on matters relating to this ground and as I have already pointed out the petitioner himself was not an impressive witness. I am not prepared to accept his evidence alleging the incompatibility between himself and the respondent without corroborative or supporting evidence as to which there does not appear to be any. The petitioner stated that he never worked at Tg. Mani but PW3 gave evidence that he was working at Tg. Mani as a stevedore after his marriage and ceased doing so about three years ago. I believe that he is now set on getting a divorce against the respondent as he said that he did not love her any more. In any event, even if he is able to prove incompatibility between himself and the respondent, that is not sufficient because he has further to prove that he and the respondent are "irreconcilable and find it impossible despite genuine efforts, to live reasonably together as man and wife" and also that they are "completely out of sympathy with each other". Whilst the difficulty of agreement between the parties regarding their residing away from the original matrimonial home may be said, at the highest, as amounting to being out of sympathy with each other, it is not possible on the evidence to take the view that the parties are irreconcilable and find it impossible, despite genuine efforts, to live reasonably together as man and wife. I accept the evidence of PW2 that he had offered to find a house for the parties in his area. On the evidence I am prepared to find that Ex. P2 was written by the respondent although she denied having done so. I consider that it is inconceivable that someone else would have forged Ex. P2 because of the nature of its contents. However, this letter Ex. P2 was written after the parties met PW2 and after he had offered to find them a house. PW2 subsequently found a house but this was not known by the respondent. The evidence does not show that further efforts to effect a reconciliation between the parties had been made, particularly in the light of this development. In the circumstances, I do not consider that sufficient efforts had been made in this direction with the result that on the evidence I do not find that the petitioner has succeeded in proving that the parties are irreconcilable and that despite genuine efforts having been made, they have found it impossible to live reasonably together as man and wife. I believe the respondent when she stated that she was prepared to live anywhere except the original matri-

monial home with the petitioner and to assist him in earning a living. The petitioner, although the evidence shows that he did not have much education, did not give me the impression of being a stupid person. He was able to answer questions put to him rationally. For the reasons given, I find that the petitioner has not succeeded in proving the second ground as given in his petition. The point has been taken by counsel for the petitioner that Datuk Ting Lik Hung, DW2, who gave evidence for the respondent and whose evidence was accepted by the court in *Tang Sui Ing's* case, did not in that case give a time limit in relation to the second ground given in the instant petition which, as earlier stated, appears to be based on one of the recognised grounds listed in the *Tang Sui Ing's* case. However, DW2 in evidence categorically stated in relation to this ground that the period required was two years. He further stated that according to Foochow custom, if a wife cannot get on with her mother-in-law, the wife is entitled to ask the husband to set up a separate home outside and that she would be justified in leaving her husband if she does not get on with her mother-in-law. DW2 also confirmed the grounds for divorce as given by him in the *Tang Sui Ing's* case.

DW2 is a well-known and well respected person in Sibü whose evidence had many a time before been accepted by the courts regarding matters relating to Foochow customary law on marriage and divorce. Like Seah J. in the case of *Kong Nen Siew v. Lim Siew Hong*,⁽²⁾ I am satisfied that he is a recognised authority on Foochow custom relating to marriage and divorce and consider that he qualifies as an expert within the meaning of section 45 of the Evidence Act, 1950. I do not consider that his evidence as to the period required on the ground of incompatibility as mentioned above conflicts with what he stated in the *Tang Sui Ing's* case but would consider the evidence he gave in this case as evidence supplementary to that given in the earlier case, and I accept his evidence, including his evidence on the point.

I hold therefore on the evidence and for the reasons which I have given that the petitioner has not succeeded in proving both grounds given by him in his petition against the respondent and accordingly his petition is dismissed with costs.

The respondent has asked for maintenance against the petitioner for herself and the child of the marriage. I have found that the respondent is living apart from the petitioner not without sufficient reason. She is therefore not to be deprived of her right to maintenance by the petitioner. In the case of *Sia Wang Yung (f) v. Hii Ik Chieng*⁽³⁾ (Sibü Matrimonial Cause No. 1 of 1967), Lee Hun Hoe J. (as he then was) states (at page 6 of the judgment) that: "If (the petitioner) had asked the respondent to set up a separate home and he failed to do so then she had every right to refuse to live at his parents' home and to ask for maintenance." The petitioner stated that he was earning an average of \$30 a month and that his younger brother who was aged about 20 years also contributed to the family expenses. However, he also stated that his father was not working but it seems clear from the evidence of PW3 that his father also planted padi with the petitioner and therefore his father was also working. I think that the petitioner was exaggerating about

A the limit of his earnings. If he was merely earning about \$30 a month, I do not consider that he would be in a position to accept the offer of PW2 to live outside with the respondent. In all the circumstances, I consider that it would not be outside the means of the petitioner to pay \$35 per month towards the maintenance of the respondent and the child of the marriage and I so order. There shall be liberty to apply for a variation of this order by either party.

B I would add a word about the child of the marriage. The evidence shows that the birth of this child has not yet been properly registered. I consider that it would be in the interest of all parties including the petitioner himself that no time should be lost in having the birth appropriately registered and steps should therefore be taken in this regard.

Order accordingly.

Solicitors: *Tang & Co.; Cheng & Co.*

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POK KEW CHAI v. YEOW THIAN SENG & ANOR.

[O.C.J. (Hashim Yeop A. Sani J.) September 28, 1974]
[Seremban — Originating Motion No. 46 of 1974]

E *Land Law — Charge of land and house — Lease by registered proprietor of ground floor of house — Consent of chargee not obtained — Lease not registrable — Whether lessee entitled to apply for entry of private caveat — Whether chargee has locus standi to apply for removal of caveat — Caveat over whole of land invalid — Application for extension of caveat not justified — National Land Code, ss. 253, 256, 267, 323(1)(a), 323(2), 325(1), 326(2), 330(1).*

F In this case the registered proprietor of land on which a two-storey shop house stood had charged it to the first respondent to secure a loan. Subsequently the registered proprietor entered into an agreement to lease the whole of the ground floor of the premises for a period of ten years to the applicant. The applicant alleged that the first respondent had been trying to coerce him to leave the premises and he lodged a private caveat against the whole of the land. The first respondent applied for the removal of the caveat and the applicant thereupon filed a motion asking that the caveat should remain on the register.

G **Held:** (1) although the agreement with the applicant in this case was void as a lease it was valid as an agreement for a lease and therefore the applicant was entitled to apply for the entry of a private caveat under section 323(1)(a) of the National Land Code;

H (2) as the caveat in this case bound the whole land and therefore necessarily bound the registered interest of the first respondent he had locus standi under section 326(1) of the National Land Code to apply for the removal of the caveat;

(3) as the applicant claimed an interest only in a specific portion of the land he was not entitled to lodge a caveat over the whole of the land and therefore the caveat lodged by him was bad and should be removed;

I (4) the applicant's interest was based on equity but as between the applicant and the first respondent it was the first respondent's interest which should take precedence;

(5) there was no justifiable ground for the extension of the caveat in this case and therefore the application of the applicant should be dismissed.

Cases referred to:-

(1) *Inter-Continental Mining Co. Sdn. Bhd. v. Societe Des Etains de Bayas Tudjuh* [1974] 1 M.L.J. 145.